

FILED  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
10/17/04 A H:02

ROBERT HAAG AND  
KATHLEEN HAAG

UNITED STATES DISTRICT COURT  
DISTRICT OF MASS.

RECEIPT # 59834  
AMOUNT \$ 150  
SUMMONS ISSUED 6  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK. M  
DATE 11-4-04

**Plaintiffs**

v.

Civil Action No.

ROBERT MURPHY  
JOHN KEACH  
INTERNAL REVENUE SERVICE  
UNITED STATES OF AMERICA

**Defendants**

**04cv12344 REK**

**COMPLAINT**

Now comes the plaintiffs, Robert and Kathleen Haag, and complain of the Defendants, Robert Murphy, John Keach, the Internal Revenue Service and the United States of America, as follows.

**JURISDICTION**

The Court's jurisdiction for the Plaintiffs' Bivens's claims and requests for an injunction is provided by 28 U.S.C. Section 1331 and their requests for Declaratory Relief is provided by 28 U.S.C. 2201.

**PARTIES**

1. The Plaintiff Kathleen Haag ("Mrs. Haag") is an individual who resides at 25 Heath Row, Marstons Mills, MA 02648.

2. The Plaintiff Robert Haag ("Mr. Haag") is an individual who resides at 25 Heath Row, Marstons Mills, MA 02648.

3. The Defendant Robert Murphy, at the times relevant hereto, was the Acting Compliance Technical Support Manager for the Internal Revenue Service (the "Service") with a business address, based on information and belief, of the John F. Kennedy Building, Boston, MA 02203.

4. The Defendant John Keach, at the times relevant hereto, was a SPF Advisor for the Service with a business address, based on information and belief, of the John F. Kennedy Building, Boston, MA 02203.

5. The Defendant Internal Revenue Service is an agency of the United States.

6. The United States is a defendant.

**FACTS**

7. Mr. and Mrs. Haag filed tax returns reflecting the filing status of married filing jointly for all tax years at issue.

8. On or about September 6, 1991 the Internal Revenue Service (the "Service") assessed additional taxes against Mr. and Mrs. Haag for the tax years of 1985, 1986 and 1987 (the

"additional assessments").

9. The additional assessments resulted from the Service's examination of Robert F. Haag and Associates, Inc. (the "corporation").

10. The corporation was solely held by Robert Haag. It carried on the trade or business of providing financial advice and financial products, including the sale of life insurance.

11. The Service determined that the corporation was a "nullity" and adjusted Mr. and Mrs. Haag's personal tax return for 1984, 1985, 1986 and 1987 to reflect the operation of Mr. Haag's business.

12. Mrs. Haag in signing the tax returns for 1984 through 1987 did not know nor did she have a reason to know that there was an understatement of tax.

13. Mrs. Haag is a high school graduate and has no education in tax or financial matters.

14. For all years at issue, Mrs. Haag has primarily been a homemaker.

15. In signing the tax returns for the years of 1985 through 1993 Mrs. Haag had no reason to believe that the subject taxes would not be addressed.

16. Mrs. Haag meets all of the criteria to qualify for the relief provided by Internal Revenue Code Section 6015.

17. I.R.C. Section 6321 provides that "[i]f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount ... shall be a lien in favor of the United States upon all property and rights to property, whether real or personal belonging to such person."

18. The federal tax lien arises upon the date of assessment and continues "until the liability for the amount so assessed ... is satisfied or becomes unenforceable by reason of lapse of time." I.R.C. Section 6322.

19. I.R.C. Section 6325(a) provides that the Secretary shall issue a certificate of release of any lien when the liability for the amount assessed is fully satisfied or legally unenforceable.

20. I.R.C. Section 6325(f)(1)(A) further provides that where a certificate of release is "issued" pursuant to "this section" and is filed in the same office as the notice of federal tax lien to which it relates, such certificate is "conclusive that the lien referred to in such certificate is extinguished ."

21. The Internal Revenue Service (the "Service") uses a "self-releasing" lien to effectuate a certificate of release.

22. The Notices of Federal Tax Lien filed against Mr. and Mrs. Haag's property were "self- releasing."

23. I.R.C. Section 6325(f)(2) additionally provides that where a certificate of release is "issued erroneously or

improvidently", the Secretary may revoke such certificate and reinstate the lien. The reinstated lien "shall have the same force and effect (as of such date)... as a lien imposed by section 6321 . . ." I.R.C. Section 6325(f)(2)(B).

24. The filing of a notice of revocation does not reinstate the lien retroactively. Rather, the priority of the lien dates from that filing. Regulation 301.6325-1(f)(2)(iii)(b) and Regulation 301.6325-1(b)(1)(ii).

25. The Service's record of filing liens against Mrs. Haag and its revocation of the self-release of these liens is as follows:

<u>Tax Period</u>	<u>Assessment Date</u>	Last <u>Refiling Date</u>	<u>Refiling Date</u>
1985	09/06/1991	10/06/2001	11/07/2003
1986	09/06/1991	10/06/2001	11/07/2003
1987	09/06/1991	10/06/2001	11/07/2003
1988	12/07/1992	01/06/2003	11/07/2003
1989	01/11/1993	02/16/2003	11/07/2003
1990	11/09/1992	12/09/2002	11/07/2003
1991	11/09/1992	12/09/2002	11/07/2003

26. In filing its revocation of its self-released liens the Service did not notify Mr. and Mrs. Haag of their statutory right to a hearing pursuant to Internal Revenue Code Sections 6320 and 6330 (hereinafter referred to as a "CDP Hearing").

27. At a CDP Hearing Mrs. Haag has a statutory right to raise her qualification for the relief provided by Internal Revenue Code Section 6015.

28. At a CDP Hearing Mr. Haag has a statutory right to request an Offer in Compromise.

29. On June 30, 2004, the Service refiled its lien against Mr. and Mrs. Haag for the 1993 tax year.

30. At the time that it refiled its lien for 1993 the Service did not provide Mr. and Mrs. Haag with an opportunity for a CDP Hearing.

**COUNT I**  
(Declaratory Relief)

31. Mr. and Mrs. Haag realleges the allegations of paragraphs 1 though 30 of its complaint as fully set forth herein.

32. An actual controversy has arisen between Mrs. Haag and the Defendants as to whether the United States has unlawfully violated their respective rights to a CDP Hearing.

33. These disagreements between Mr. and Mrs. Haag and the Defendants necessitate a declaratory judgment to determine their right to a CDP hearing.

WHEREFORE Mr. and Mrs. Haag request:

1. That the Court adjudicate the controversies which have arisen between the parties and make a binding declaration of the rights of the parties;

2. That the Court determine that Mr. and Mrs. Haag are entitled to a CDP Hearing;

3. For other and further relief that the Court deems just and proper.

**COUNT II**  
(Bivens claim v. Murphy)

34. Mr. and Mrs. Haag realleges the allegations of paragraphs 1 though 33 of their complaint as fully set forth herein.

35. Mr. and Mrs. Haag had a statutory right to a CDP Hearing.

36. Mr. and Mrs. Haag had a right protected by the Fifth Amendment to the United States Constitution to be treated as similarly situated taxpayers.

37. Mr. Murphy acting under color of federal law placed a lien on the assets of Mr. and Mrs. Haag. (Please see Exhibit 1.)

38. Mr. Murphy acting under color of federal law failed to provide the notice and right to a hearing required by Internal Revenue Code Section 6320 to Mr. and Mrs. Haag.

39. Mr. Murphy violated the rights guaranteed to Mr. and Mrs. Haag by the United States Constitution.

WHEREFORE Mr. and Mrs. Haag demand judgment against Mr. Murphy together with attorney's fees and costs.

**COUNT III**  
(Bivens claim v. Keach)

40. Mr. and Mrs. Haag realleges the allegations of paragraphs 1 though 39 of their complaint as fully set forth herein.

41. Mr. and Mrs. Haag had a statutory right to a CDP Hearing.

42. Mr. and Mrs. Haag had a right protected by the Fifth Amendment to the United States Constitution to be treated as similarly situated taxpayers.

43. Mr. Keach acting under color of federal law placed liens on the assets of Mr. and Mrs. Haag. (Please see Exhibit 2 & 3.)

44. Mr. Keach acting under color of federal law failed to provide the notice and right to a hearing required by Internal Revenue Code Section 6320 to Mr. and Mrs. Haag.

45. Mr. Keach violated the rights guaranteed to Mr. and Mrs. Haag by the United States Constitution.

WHEREFORE Mr. and Mrs. Haag demand judgment against Mr. Murphy together with attorney's fees and costs.

**COUNT IV**  
(Injunction)

46. Mr. and Mrs. Haag realleges the allegations of paragraphs 1 though 45 of their complaint as fully set forth herein.

47. The Defendants are properly ordered to provide the statutory notice and right to a CDP Hearing.

WHEREFORE Mrs. Haag requests:

1. That the Court issue an injunction compelling the Defendants to provide the statutory notice and right to a CDP Hearing.

**COUNT V**

(Injunction v. United States and Internal Revenue Service)

48. Mr. and Mrs. Haag realleges the allegations of paragraphs 1 though 47 of their complaint as fully set forth herein.

49. The United States and the Internal Revenue Service ability to collect the tax assessments against Mrs. Haag arise entirely from its knowingly violation of law.

50. The remedies available to Mr. Haag and Mrs. Haag are inadequate to provide her with relief from the United States and Internal Revenue Service's unlawful actions.

51. The Defendants unlawful actions are sufficient to meet or create and exception to Internal Revenue Code Section 7421, which generally prohibits the entry of injunctions prohibiting collection.

WHEREFORE Mr. Haag and Mrs. Haag requests:

1. That the Court issue an injunction compelling the Internal Revenue Service to hold a CDP Hearing.

**COUNT VI**  
(Attorney's Fees)

52. The Plaintiff repeats and realleges paragraphs 1 through 51 of its complaint as fully set forth herein.

53. The Plaintiff has incurred and continues to incur attorney's fees in this action. It is entitled to an award of attorney's fees pursuant to the Equal Access to Justice Act, 28 USC Sec. 2412 (b) and IRC Sec. 7430.

WHEREFORE, for the foregoing reasons, the Plaintiffs pray this honorable Court for:

- a. Plaintiffs attorney's fees and costs in this action to be paid by the Defendants pursuant to 28 USC Sec. 2412(b) and IRC Sec. 7430; and,
- b. Any and all other remedies that this honorable court deems appropriate.

**Trial by Jury**

The plaintiffs request a trial by jury for those issues so triable.

Kathleen Haag  
Robert Haag  
by their Attorney

Timothy J. Burke  
Burke & Associates  
400 Washington Street  
Braintree, MA 02184  
(781) 380-0770

Dated: November 3, 2004

# EXHIBIT 1

**Revocation of Certificate of Release of Federal Tax Lien**

Area: SMALL BUSINESS/SELF EMPLOYED AREA #1 Lien Unit Phone (617) 316-2575	Serial Number 49421103	For Use by Recording Office
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I certify that we mistakenly allowed a Notice of Federal Tax Lien filed against the taxpayer listed below to operate as a Certificate of Release. I declare that the automatic release of the Notice of Federal Tax Lien is revoked and that the lien is reinstated as provided under Internal Revenue Code Section 6325(f)(2).

Name of Taxpayer ROBERT F & KATHLEEN HAAG

Residence 25 HEATH ROW  
MARSTONS MILLS, MA 02648-1129

COURT RECORDING INFORMATION:  
Liber Page UCC No. Serial No.  
09432 0342 n/a 64590

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1988	313-42-7384	12/07/1992	01/06/2003	159351.56
1040	12/31/1989	313-42-7384	01/11/1993	02/10/2003	101326.29
1040	12/31/1990	313-42-7384	11/09/1992	12/09/2002	2679.15
1040	12/31/1991	313-42-7384	11/09/1992	12/09/2002	44918.10
*****	*****	*****	*****	*****	*****

  

Place of Filing Registry of Deeds Barnstable County Barnstable, MA 02630	Total \$ 308275.10
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This notice was prepared and signed at Boston, MA, on this,  
the 07th day of November, 2003.

Signature:

Title Compliance Technical Support  
Manager

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Revocation of Certificate of Release of Federal Tax Lien. Rev. Rul. 71-466, 1971-2 C.B. 409.)

Form 12474(A)  
(Rev. 10-00)

2210 Department of the Treasury - Internal Revenue Service

**Revocation of Certificate of Release of Federal Tax Lien**

Area: SMALL BUSINESS/SELF EMPLOYED AREA #1 Lien Unit Phone (617) 316-2575	Serial Number 49251443	For Use by Recording Office
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I certify that we mistakenly allowed a Notice of Federal Tax Lien filed against the taxpayer listed below to operate as a Certificate of Release. I declare that the automatic release of the Notice of Federal Tax Lien is revoked and that the lien is reinstated as provided under Internal Revenue Code Section 6325(f)(2).

Name of Taxpayer ROBERT F &amp; KATHLEEN HAAG

Residence	25 HEATH ROW MARSTONS MILLS, MA 02648-1129
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Liber	Page	COURT RECORDING INFORMATION:
n/a	n/a	UCC No. Serial No. n/a n/a 43994

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1985	313-42-7384	09/06/1991	10/06/2001	215340.68
1040	12/31/1986	313-42-7384	09/06/1991	10/06/2001	55722.92
1040	12/31/1987	313-42-7384	09/06/1991	10/06/2001	81655.73
*****	*****	*****	*****	*****	*****

  

Place of Filing	Registry of Deeds Barnstable County Barnstable, MA 02630	Total \$ 352719.33
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This notice was prepared and signed at Boston, MA, on this, the 07th day of November, 2003.

Signature

Title Compliance Technical Support  
Manager

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Revocation of Certificate of Release of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

## EXHIBIT 2

2229

## COURT RECORDING DATA

INTERNAL REVENUE SERVICE  
FACSIMILE FEDERAL TAX LIEN DOCUMENT

Lien Recorded : 11/21/2003 - 08:14AM  
Recording Number: 133949  
UCC Number :  
Liber : 17951  
Page : 1  
\*\*Self-released\*\*  
\*\* Revocation \*\*:

Area: SMALL BUSINESS/SELF EMPLOYED #1  
Lien Unit Phone: (617) 316-2575

IRS Serial Number: 40333886

This Lien Has Been Filed in Accordance with  
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :

ROBERT F & KATHLEEN HAAG

Residence :

25 HEATH ROW  
MARSTONS MILLS, MA 02648-1129

With respect to each assessment below, unless notice of lien  
is refiled by the date in column(e), this notice shall constitute  
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/1985	313-42-7384	09/06/1991	N/A	159077.83
1040	12/31/1986	313-42-7384	09/06/1991	N/A	81655.73
1040	12/31/1987	313-42-7384	09/06/1991	N/A	81655.73
1040	12/31/1988	313-42-7384	12/07/1992	N/A	159351.56
1040	12/31/1989	313-42-7384	01/11/1993	N/A	101326.29
1040	12/31/1990	313-42-7384	11/09/1992	N/A	2753.15
1040	12/31/1991	313-42-7384	11/09/1992	N/A	44918.10

Filed at: Registry of Deeds  
Barnstable County  
Barnstable, MA 02630

Total \$ 630738.39

This notice was prepared and executed at BOSTON, MA  
on this, the 17th day of November, 2003.

Authorizing Official:

JOHN KEACH

Title:  
SPF ADVISOR

21-97-6932

## EXHIBIT 3

Filed at: U.S. District Court

USDC ELECTRONIC

Boston, MA 02109

Total | \$ 630738.39

This notice was prepared and executed at ,  
on this, the 17th day of November, 2003.

Page 18 of 20

Authorizing Official:

JOHN REACH

(401) 525-4274

Title:  
SPF ADVISOR

21-97-6932

Filed 11/04/2004

1004 \*\*\* REFILED NOTICE \*\* REFILED NOTICE \*\*\* COURT RECORDING DATA

INTERNAL REVENUE SERVICE | Lien Recorded : 06/30/2004 - 17:00PM  
FACSIMILE FEDERAL TAX LIEN DOCUMENT | Recording Number: 01008HAA2453187

| UCC Number : IRS179331804  
| Liber :  
| Page : 2

Area: SMALL BUSINESS/SELF EMPLOYED #1 | Original IRS Serial No.: 49511420

| Lien Recorded : 05/04/1995

This Lien Has Been Filed in Accordance with:

Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer:

ROBERT F & KATHLEEN HAAG

Case 1:04-cv-12344-WGY

Revolving :

25 FEATH ROW

MARSTONS MTNS, MA 02548-1129

'a'	'b'	'c'	'd'	'e'	'f'
-	-	-	-	-	-
1040	12/31/1993	313-42-7384	02/20/1995	N/A	48531.45

## NOTICE OF FEDERAL TAX LIEN REFILING

Serial ID: 179331804

New TIN Name: SAME AS ABOVE

New Address :

25 HEATH ROW

MANSTONS MILLS, MA 02648-1129

Authorizing Official:

JOHN REACH

(44C1) 525-4274

DATE : 06/25/2004

Title: SPF ADVISOR  
21-97-6932

Filed at: U.S. District Court

USDC ELECTRONIC

Boston, MA 2109

Total	\$ 48531.45
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This notice was prepared and executed at,  
this, the 03rd day of May, 1995.

Authorizing Official:

Alan Vincent

Title:  
REVENUE OFFICER  
04-01-1606

2229

## COURT RECORDING DATA

INTERNAL REVENUE SERVICE  
FACSIMILE FEDERAL TAX LIEN DOCUMENT

Lien Recorded : 11/20/2003 - 08:30AM  
Recording Number: 02645HAA2452964  
UCC Number : IRS040333887  
Liber :  
Page :  
\*\*Self-released\*\*  
\*\* Revocation \*\*:

Area: SMALL BUSINESS/SELF EMPLOYED #1  
Lien Unit Phone: (617) 316-2575

IRS Serial Number: 40333887

This Lien Has Been Filed in Accordance with  
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :

ROBERT F & KATHLEEN HAAG

Residence :

25 HEATH ROW  
MARSTONS MILLS, MA 02648-1129

With respect to each assessment below, unless notice of lien  
is refiled by the date in column(e), this notice shall constitute  
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/1985	313-42-7384	09/06/1991	N/A	159077.83
1040	12/31/1986	313-42-7384	09/06/1991	N/A	81655.73
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1040	12/31/1989	313-42-7384	01/11/1993	N/A	101326.29
1040	12/31/1990	313-42-7384	11/09/1992	N/A	2753.15
1040	12/31/1991	313-42-7384	11/09/1992	N/A	44918.10

Filed at: U.S. District Court  
USDC ELECTRONIC  
Boston, MA 02109

Total \$ 630738.39

This notice was prepared and executed at BOSTON, MA  
on this, the 17th day of November, 2003.

Authorizing Official:  
JOHN KEACH

Title:  
SPF ADVISOR

21-97-6932